



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1994

Ms. Tamara A. Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR94-707

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27927.

Travis County (the "county"), through its medical examiner, has received a request for all files and investigative reports regarding persons who died in Travis County between January 1, 1994, and July 15, 1994. You advise us that the county has made some of the requested information available to the requestor. You seek, however, to withhold the remaining information under sections 552.101, 552.108, and 552.115 of the Government Code.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the submitted information includes records governed by the Medical Practice Act,

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

V.T.C.S. article 4495b. Section 5.08(b) of the Medical Practice Act provides that "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician" are confidential. Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. Attorney General Opinion JM-229 (1984) at 2; Open Records Decision No. 343 (1982) at 1. The confidentiality article 4495b affords physician-patient records does not lapse upon the death of the patient. Attorney General Opinion JM-299 (1984). Some of the records submitted to us for review were prepared by a physician. These records have been marked and must be withheld from required public disclosure under section 552.101 of the Government Code.

We note that one of the records submitted to us for review is governed by section 773.091 of the Health and Safety Code, which provides:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

We do not understand any of the exceptions to confidentiality set forth in section 773.092 of the Health and Safety Code to apply in this instance. Accordingly, the county must withhold the submitted emergency medical services record in its entirety under section 552.101 of the Government Code.

You also claim that some of the requested information relates to pending law enforcement investigations and is therefore excepted from disclosure by section 552.108 of the Government Code. Section 552.108 excepts from disclosure

(a) [a] record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
[and]

(b) [a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between information relating to cases that are still under active investigation and other information. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle*

Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976).

You have submitted to us for review information relating to a police investigation involving a person who allegedly died of a heart attack. Because the person died under mysterious circumstances, the police are investigating the possibility that murder, not a heart attack, was the cause of death. This information relates to a pending law enforcement investigation and, except for first-page offense report information, may be withheld from required public disclosure under section 552.108 of the Government Code.

Finally, you seek to withhold under section 552.115 what you term "preliminary death certificates." Section 552.115 of the Government Code provides:

A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health is excepted from [required public disclosure], except that:

- (1) a birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official; and
- (2) a death record is public information and available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official.

Gov't Code § 552.115. Section 552.115 excepts from disclosure certain birth or death records maintained by the bureau of vital statistics of the Texas Department of Health. Section 552.115 makes birth records available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or a local registration official and makes death records available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vital statistics or a local registration official. *See generally* Open Records Decision No. 596 (1991). Section 552.115, by its very terms, however, does not except birth or death certificates that are not filed with the bureau of vital statistics or a local registration official, *i.e.*, birth or death certificates contained in a personnel file. Therefore, neither the death certificates nor the "preliminary death certificates" contained in the requested records are excepted from disclosure by section 552.115.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is written in a cursive style with a large, looped "R" at the end.

Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 27927

cc: Mr. Rick W. Lyons
Attorney at Law
11904 Springhill
Austin, Texas 78753
(w/o enclosures)